

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Carlos Humberto Gallo Vazquez,

Plaintiff,

v.

Civil No. 10-4217 (JNE/TNL)
ORDER

Defendant Nagel, in his individual and official capacities as L.T.; Gunnar Kruger, in his individual and official capacities as counselor; and C. Greiner, in his individual and official capacities,

Defendants.

On March 14, 2012, the Court adopted a Report and Recommendation, dismissed the Complaint, and entered judgment. After appealing, Plaintiff, who is incarcerated in a federal medical center, sought leave to proceed in forma pauperis (IFP) on appeal.

To qualify for IFP status on appeal, a prisoner who appeals from a judgment in a civil action must submit information that demonstrates the prisoner's inability to pay, or give security for, the appellate filing fees. 28 U.S.C. § 1915(a)(1) (2000). The prisoner must also submit a certified copy of the trust fund account statement for the prisoner for the six-month period immediately preceding the filing of the notice of appeal. *Id.* § 1915(a)(2). Even if the prisoner obtains IFP status on appeal, the prisoner is liable for payment in full of the \$455 appellate filing fees without regard to the outcome of the appeal. *Id.* § 1915(b)(1); *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (per curiam). By filing a notice of appeal, the prisoner consents to the deduction of an initial partial appellate filing fee and the remaining installments from his prison account by prison officials. *Henderson*, 129 F.3d at 484. Even if the prisoner is financially eligible to proceed IFP on appeal, the prisoner may not appeal IFP if the district court "certifies in writing that [the appeal] is not taken in good faith." 28 U.S.C. § 1915(a)(3).

Based on the information submitted by Plaintiff, the Court finds that he is financially eligible for IFP status on appeal. His initial partial appellate filing fee is \$11.27.¹ The Clerk of Court shall (1) notify the prison officials at the institution where Plaintiff is incarcerated to pay Plaintiff's \$11.27 initial partial appellate filing fee from Plaintiff's account; (2) notify the prison officials to pay the remaining balance of Plaintiff's appellate filing fees, \$443.73, from Plaintiff's account in the manner prescribed by 28 U.S.C. § 1915(b)(2); and (3) send a copy of this Order to Plaintiff and to the prison officials. *See Henderson*, 129 F.3d at 485.

Although the Court remains satisfied that Plaintiff's claims were properly addressed, the Court declines to certify that his appeal is not taken in good faith. Accordingly, the Court grants Plaintiff's application to proceed IFP on appeal.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. The prison officials at the institution where Plaintiff is incarcerated shall pay the \$11.27 initial partial appellate filing fee from Plaintiff's account to the Clerk of Court.
2. The prison officials at the institution where Plaintiff is incarcerated shall pay the remaining balance of his appellate filing fees, \$443.73, from his account to the Clerk of Court in the manner prescribed by 28 U.S.C. § 1915(b)(2).
3. Plaintiff's application to proceed IFP on appeal [Docket No. 46] is GRANTED.
4. The Clerk of Court shall send copies of this Order to Plaintiff, to the prison officials at the institution where Plaintiff is incarcerated, and to the United States Court of Appeals for the Eighth Circuit.

Dated: May 7, 2012

s/ Joan N. Ericksen
 JOAN N. ERICKSEN
 United States District Judge

¹ The Certificate of Authorized Prison Official that Plaintiff submitted in support his application to proceed IFP on appeal indicates that the average monthly deposits to Plaintiff's account was \$56.36 and that the average monthly balance in his account was \$56.36. The initial partial appellate filing fee is \$11.27 (\$56.36 * 20% = \$11.27). 28 U.S.C. § 1915(b)(1).